

**IN THE COURT OF COMMON PLEAS DELAWARE COUNTY, OHIO**

STATE OF OHIO, ex rel.	)	CASE NO.
ATTORNEY GENERAL	)	
DAVE YOST	)	
30 East Broad St., 14th Floor	)	JUDGE
Columbus, Ohio 43215	)	
	)	
Plaintiff,	)	<b><u>COMPLAINT FOR</u></b>
	)	<b><u>DECLARATORY JUDGMENT,</u></b>
v.	)	<b><u>INJUNCTIVE RELIEF,</u></b>
	)	<b><u>RESTITUTION, CIVIL</u></b>
DIAMOND AUTO GROUP LLC	)	<b><u>PENALTIES, AND OTHER</u></b>
c/o Statutory Agent	)	<b><u>APPROPRIATE RELIEF</u></b>
BRIAN HARTNEY	)	
70 Thornbury Lane	)	
Powell, OH. 43065	)	
	)	
and	)	
	)	
BRIAN HARTNEY, Individually	)	
70 Thornbury Lane	)	
Powell, OH. 43065	)	
	)	
Defendants.	)	

**JURISDICTION**

1. Plaintiff, State of Ohio, by and through counsel, the Attorney General of Ohio, Dave Yost, having reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.*
  
2. The actions of Defendants Diamond Auto Group LLC ("Diamond Auto") and Brian Hartney ("Hartney") (collectively "Defendants"), hereinafter described, have occurred in the State of Ohio, Delaware County and other counties, and, as set forth below, are in violation of the CSPA, R.C. 1345.01 *et seq.*, and the Certificate of Motor Vehicle Title Act,

R.C. 4505.01 *et seq.*

3. Defendants, as described below, are each a “supplier” as that term is defined in R.C. 1345.01(C) as Defendants were, at all times relevant herein, engaged in the business of effecting or soliciting “consumer transactions” as that term is defined in R.C. 1345.01(A).
4. Defendants, as described below, engaged in “consumer transactions” by offering for sale, selling or financing the purchase of used motor vehicles to individuals for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A).
5. The actions of Defendants, hereinafter described, have occurred in the State of Ohio and Delaware County.
6. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
7. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(1)-(3), in that Defendants operated their business from, reside in, and engaged in some of the transactions complained of herein in Delaware County, Ohio.

#### **STATEMENT OF FACTS**

8. Defendant Diamond Auto is a domestic limited liability company conducting business in Delaware County and other counties in the State of Ohio with its principal place of business located at 214 N. Liberty St., Powell. Ohio 43065.
9. Defendant Diamond Auto at all relevant times was a licensed used motor vehicle dealer, operating under a permit issued by the Ohio Bureau of Motor Vehicles, permit number UD022755. The permit is active.

10. On information and belief, Defendant Hartney is an individual whose address is 70 Thornbury Lane, Powell, Ohio 43065.
11. On information and belief, Defendant Hartney is the principal owner of Diamond Auto and dominated, controlled and directed the business activities and sales conduct of Diamond Auto, exercised the authority to establish, implement or alter the policies of Diamond Auto, and committed, allowed, directed, ratified or otherwise caused the following unlawful acts to occur.
12. Defendants were at all times relevant to this action engaged in the business of soliciting, promoting, purchasing, selling, financing and collecting the proceeds of the sales of used motor vehicles to consumers residing in Delaware and other Ohio counties.
13. Defendants, operating under the name Diamond Auto Group LLC, solicited individual consumers to enter into consumer transactions, specifically for the sale of used motor vehicles.
14. The Defendants failed to file applications for certificates of title within thirty days after the assignment or delivery of motor vehicles.
15. The Defendants failed to obtain certificates of title on or before the fortieth day after the sale of motor vehicles.
16. The Defendants maintained a net worth bond pursuant to Ohio Administrative Code Section 4501:1-3-11 which requires all applicants for used motor vehicle dealer licenses made after January 1, 2017 to post with the Plaintiff, in favor of this state, a bond of a surety company authorized to do business in this state, in an amount not less than twenty-five thousand dollars. The surety bond is used solely for the purpose of replenishing funds

that have been dispersed to compensate retail purchasers of motor vehicles, pursuant to R.C. 4505.181.

17. As a result of the Defendants' conduct, retail purchasers were unable to obtain certificates of title to their used motor vehicles, and filed claims with the Ohio Attorney General pursuant to Ohio's Title Defect Recision (TDR) statute, R. C. 4505.181.
18. The TDR Fund claims totaled \$49,719.98 and were paid from the TDR Fund, administered by the Ohio Attorney General's Office, after the Defendants failed to obtain certificates of title on or before the fortieth day after the sale of motor vehicles to the retail purchasers.
19. A \$25,000.00 claim has been made to the surety, which if paid, will leave a remaining balance due the TDR Fund in the amount of \$24,719.98

#### **VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT**

20. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Nineteen (1-19) of this Complaint.
21. The Defendants engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02(A) by failing to file applications for certificates of title within thirty days after the assignment or delivery of motor vehicles as required by R.C. 4505.06(A)(5)(b).
22. The Defendants engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02(A), by selling motor vehicles to consumers, in the ordinary course of business, and then failing to obtain certificates of title on or before the fortieth day after the sale of the motor vehicles as required by R.C. 4505.181(B)(1).
23. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* The Defendants committed said violations after such decisions were

available for public inspection pursuant to R.C. 1345.05(A)(3).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that this Court:

- A. ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in Plaintiff's Complaint violates the CSPA, R.C. 1345.01 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.* in the manner set forth in this Complaint.
- B. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Defendants and any officers, agents, representatives, salespeople, employees, successors and assigns and all persons acting in concert or participating with them, directly or indirectly, from engaging in the acts and practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 *et seq.*, and the Certificate of Motor Vehicle Title Act, R.C. 4505.01 *et seq.*
- C. ORDER Defendants liable for reimbursement to all consumers found to have been damaged by the Defendants' unfair and deceptive acts and practices, and motor vehicle title violations.
- D. ORDER Defendants liable for payment to the TDR Fund for funds expended to resolve title defects caused by Defendants' motor vehicle title violations.
- E. ASSESS, FINE, AND IMPOSE upon Defendants a civil penalty of \$25,000.00 for each of the appropriate unfair and deceptive acts alleged in the Complaint, pursuant to R.C. 1345.07(D).
- F. ORDER that the Defendants be enjoined from engaging in consumer transactions as a Supplier in the State of Ohio until they have satisfied all restitution, civil penalties, court costs, and repaid the TDR Fund.

- G. ORDER that the Defendants be prohibited from maintaining, renewing or applying for an auto dealer or salesperson license under Chapter 4517 of the Revised Code.
- H. GRANT Plaintiff its costs in bringing this action, including, but not limited to, the costs of collecting on any judgment awarded, including any interest costs as permitted by statute.
- I. ORDER the Defendants to pay all court costs.
- J. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Dave Yost  
Ohio Attorney General

/s/ Rosemary E. Rupert

ROSEMARY E. RUPERT (0042389)  
Principal Assistant Attorney General  
Consumer Protection Section  
Ohio Attorney General's Office  
30 East Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 752-5548  
rosemary.rupert@ohioattorneygeneral.gov  
*Counsel for Plaintiff*